

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ESTATE OF AMADOR HERNANDEZ	§	
JR., AMADOR HERNANDEZ, III,		
Individually and as Representative of the	§	
ESTATE OF AMADOR HERNANDEZ		
JR., AMANDA YVETTE HERNANDEZ	§	
AND MICHAEL HERNANDEZ,		
Plaintiffs,	§	
vs.	§	CIVIL ACTION NO. 3:12-CV-04859-M
UNITED STATES OF AMERICA,	§	
THE UNIVERSITY OF TEXAS		
SOUTHWESTERN MEDICAL CENTER	§	
AT DALLAS		
Defendants.	§	

**DEFENDANT UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER
AT DALLAS OBJECTIONS TO PLAINTIFFS' EXPERT REPORT**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant University of Texas Southwestern Medical Center ("UTSWMC") represented by and through the undersigned Assistant Attorney General of Texas, and subject to its Motion to Dismiss pursuant to the Eleventh Amendment still pending with the court, files its objections to Plaintiffs' expert report pursuant to TEX. CIV. PRAC. & REM. CODE §74.351.

I.
UTSWMC IS NOT SEEKING AFFIRMATIVE RELIEF

Defendant UTSWMC, subject to its Motion to Dismiss pursuant to the Eleventh Amendment, files its objections to Plaintiffs' expert report merely to preserve its right to assert the objections, if necessary, in the future. Defendant UTSWMC is not seeking affirmative relief

from this court. It is **not** moving the court to issue a ruling regarding these objections since this court does not have jurisdiction over this State defendant.

II. BACKGROUND

1. Plaintiffs allege that on September 20 and 23, 2013, Plaintiff Amador Hernandez, Jr. had certain procedures performed allegedly involving several doctors.
2. On February 8, 2013, Plaintiffs filed their Amended Original Petition naming the University of Texas Southwestern Medical Center at Dallas as a Defendant.
3. Defendant UTSWMC filed its Original Answer on March 12, 2013.
4. Defendant UTSWMC filed its Motion to Dismiss pursuant to the Eleventh Amendment on March 12, 2013 and it is still pending before this court.
5. Plaintiffs' served their expert report with CV on Defendant UTSWMC on March 28, 2013.

III.

The report prepared by Plaintiffs' expert Dr. Paul Sherman Brown Jr., fails to comply with the mandates § 74.351 because it is insufficient as regards UTSWMC. It is insufficient in failing to address direct negligence theories against UTSWMC and in failing to specifically implicate UTSWMC on any theory of liability or any alleged breach of a standard of care that applies to UTSWMC and a causal relationship between the alleged breach and any alleged injury.

IV. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Defendant UTSWMC, subject to its Motion to Dismiss pursuant to the Eleventh Amendment that is pending before this court and without waiving same, files its objections to Plaintiff's expert report and Brief in Support filed concurrently, **merely to preserve its objections**. Defendant UTSWMC does **not** move for any

affirmative relief. It does ***not*** ask the court for any ruling on its objections since this court does not have jurisdiction over this State defendant.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was forwarded by electronic filing, fax transmission and/or certified mail, return receipt requested, by depositing it enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the care and custody of the United States Postal Service on April 18, 2013, to the court and the following:

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